

Commerce Bancshares, Inc.

Audit and Compliance Department, TB12-1
1000 Walnut St., P.O. Box 419248
Kansas City, MO 64141-6248

May 2, 2011

Delivered Via Email: regs.comments@federalreserve.gov.

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N. W.
Washington, DC 20551

RE: Regulation Z; Docket No. R-1406

Dear Ms. Johnson:

Commerce Bancshares, Inc. ("CBI") is a regional bank holding company with one bank subsidiary, Commerce Bank, N.A. ("Commerce"), and total assets of \$19 billion at March 31, 2011. Commerce is a full-service bank, with approximately 370 banking locations in Missouri, Illinois, Kansas, Oklahoma, and Colorado and credit card operations in Nebraska. A full line of banking services, including investment management and securities brokerage, is offered. CBI also has operating subsidiaries involved in mortgage banking, credit related insurance, and private equity activities.

We appreciate the opportunity to comment on the proposed changes to Regulation Z, that would implement certain amendments to the Truth in Lending Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which requires creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a dwelling. Specifically, the proposal would lengthen the time the mandatory escrows must be maintained, require new disclosures related to escrow accounts, and provides an exemption from escrow account requirements if certain conditions are met. In addition, this proposal also includes a change in the method used to determine if a loan is a higher-priced mortgage by adding a calculation called the "transaction coverage rate" which was included in a previous Regulation Z proposal that had been suspended.

Three business day waiting period prior to closing.

We understand that the intended purpose of the proposed escrow account disclosure requirement is to inform the consumer of the risks related to not having an escrow account. However, we do not believe that adding another disclosure (that requires a three business day waiting period after receipt) to the already overwhelming amount of required documents a consumer must be provided prior to closing provides the end result of a more informed consumer. The addition of more paper continues to provide the less than scrupulous originator with the confusion needed to influence the consumer to enter into something not in his/her best interest and only adds to consumer confusion, frustration, and costs. We would strongly recommend that the proposed requirement to add escrow account disclosures not be implemented at this time. Instead, we would recommend that the escrow account information be included in the combined Regulation Z and RESPA disclosure mandated by

the Dodd-Frank Act to provide more informative streamlined information/disclosures to the consumer. We understand that one of the goals of the new Consumer Financial Bureau is to lessen the confusion experienced by consumers in connection with the mortgage process and urge the Board to reconsider the need for yet another disclosure.

When an escrow account is a choice, not a requirement.

Unless the transaction is a higher-priced mortgage or there are loan-to-value (LTV) limits established by the creditor which require the creditor to establish an escrow account, the creditor may offer the consumer the choice of whether or not he/she wants to have an escrow account. Generally this choice is given early in the application/underwriting process. The following are actual scenarios that happen today:

Scenario 1

The consumer is allowed to decide whether or not they want to establish an escrow account. The initial decision by the consumer was not to have an escrow account and all disclosures were provided based upon that request. The day of closing the consumer contacts the creditor and requests that an escrow account be established.

Scenario 2

The consumer wanted an escrow account and expressed that to the creditor at application. The creditor makes all disclosures reflecting that fact. The day of closing the consumer contacts the creditor and now decides they do not want an escrow account.

In the scenarios above applying the proposed rule would result in the creditor having to delay the closing up to 6 business days in order to provide the consumer with another escrow account disclosure and allow for receipt and another mandatory three business day waiting period. In a purchase transaction, this most likely would result in a consumer not meeting his/her contractual closing date and either having to pay the seller an additional fee to agree to change the closing date or the consumer losing down payment monies paid due to not being able to close on the contractually agreed upon date. In addition, in a refinance transaction the consumer could incur additional interest costs or penalties on the loan being refinanced when the closing is delayed.

We would strongly recommend in the situation where the consumer has been provided an escrow account disclosure and the initial mandatory waiting period has passed that the Board not require an additional mandatory waiting period when either the consumer's escrow account choice changes or the loan terms change which result in either a higher-priced mortgage or LTV that requires an escrow account be established.

Real property inclusion into the escrow requirements §226.19(f)

The proposed rule related to escrow requirements includes “*real property*.” The proposed *Non-Establishment of Escrow Account Disclosure* (H-25) refers to property taxes and insurance to pay for “home-related costs” as well as a specific reference to “traditional homeowner’s insurance.” These references assume that there is a “dwelling” located on the land. In a consumer purpose land only or a construction loan the consumer would have to receive the H-25 three business days prior to consummation advising them of the risk of not having an escrow account when an escrow account is **not ever** an option on this loan type. This is just another piece of paper that does not add value to consumer for this transaction type. We strongly recommend that “real property” be removed from the escrow disclosure requirements.

Boats, Trailers, and Mobile Homes included in the escrow requirements §226.19(f)

Lenders have not historically offered the option of escrow accounts on loans secured by boats, trailers, and mobile homes. This can be due to systems on which these loan types are serviced not having the escrow account management function. Providing the consumer with a notice that informs them that there is not an escrow account when that is not even an option, only serves to confuse the consumer and delays the closing with no outright benefit to the consumer. We strongly recommend that the Board remove boats, trailers, and mobile homes (not secured to a foundation) from the escrow account disclosure requirements.

H-25 Non-Establishment of Escrow Account Model Form – when escrows are not an option.

Another area of concern is first lien loans where the consumer owns the property free and clear and he/she wants to obtain a smaller loan amount with shorter repayment terms. Creditors may meet the consumer’s needs by offering a home equity loan product which does not include an escrow account option. In the proposed model form H-25 disclosure it states:

- *What is the purpose of this notice? – This notice is to inform you that your mortgage with (Creditor’s Name) will not have an escrow account. It also describes the risk of not having an escrow account.”*

The second sentence implies there is an option for an escrow account in situations where that is not an option. We would suggest that the sentence “*It also describes the risk of not having an escrow account*” be referenced in the commentary as a sentence that can be removed when an escrow account is not an option.

Date to disclose in the H-25 and H-26 model escrow account disclosures.

The following escrow account disclosures require a contact-by date be disclosed; however, the proposed rule and corresponding commentary does not provide direction as to whether there is a

minimum or maximum time limit for this date or if the date is optional based upon whether or not the creditor has an operational cut-off date.

H-25 – Non-Establishment of Escrow Account Model Form

*Can I set up an escrow account on my mortgage? Yes. If you want to set up an escrow account on your mortgage, contact us at (telephone number) by **(date)**.*

H-26 – Cancellation of Escrow Account Model Form

*Can I keep the escrow account on my mortgage? Yes. If you want to keep the escrow account on your mortgage, contact us at (telephone number) by **(date)**.*

We recommend that the Board make this date an optional field to be completed by the creditor if their internal processes have an operational cut-off date and not make it a required field on the proposed model forms H-25 and H-26 in the sections indicated above.

Partial Escrows

There are times in a voluntary escrow situation where the consumer requests that the creditor establish an escrow account for only the payment of either property taxes or dwelling related insurances, but not both. The Board does not address this situation in the proposed rules and the proposed model forms only address when an escrow account is established for both property taxes and dwelling related insurances or not established at all. We recommend that the Board provide direction in the proposed rule about how the creditor is to disclose when an escrow account is established for either property taxes or dwelling related insurances, but not both.

Transaction Coverage Rate (TCR):

Currently, when a higher-priced mortgage loan is made the APR in the Truth in Lending Disclosure can be referenced when explaining it to the consumer. The proposed change to use a TCR is intended to reduce the number of loans that are higher-priced by limiting the calculation to only the interest rate and those charges retained by the lender. Explaining this to consumer will be challenging without the TCR being present in any documentation that the customer receives. We do not recommend adding this to any disclosure, we want the Board to be aware that this change can result in more consumer confusion and potential consumer complaints, since the originator will have to explain how it was determined that the consumer's loan was a higher-priced mortgage loan without having a point of reference in any documentation that the consumer will have received.

In addition, in 2009 changes were made to Regulation C to align the reporting of rate spreads with the Regulation Z higher-priced mortgage calculations. If the TCR change is made final, we strongly recommend that the same changes be made to Regulation C before the rule is made final and that the effective date be no earlier than January 1, 2013. This would allow software vendors and

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lenders the time needed to updated software, update systems/processes, test, enhance policies and procedures, and train staff only once and not multiple times.

Closing Comments

In our opinion this is not the time to add additional disclosures to an already overwhelming number of disclosures that the consumer receives. This type of information should be taken into consideration in the task of combining the Truth-in-Lending and RESPA disclosures and either added to the content of the Special Information Booklet and/or simplified into a one or two sentence statement on the combined disclosure. The Special Information Booklet could provide details related to the benefit of having an escrow account and then, if needed, a simple statement added to the combined TILA/RESPA disclosure that states:

“Your payment includes an escrow for [property taxes, homeowner’s insurance, mortgage insurance, flood insurance, and earthquake insurance choose those that apply].”

Or

“ You will be responsible for paying directly to the appropriate authorities property taxes and any required insurance. Refer to your security instrument [or Special Information Booklet] for the action that may be taken by the lender in the event property taxes and/or insurances are not paid timely.”

Thank you for giving us the opportunity to comment on the proposed rules.

Sincerely,

Sally J. Feistner, CRCM
Compliance Officer
Commerce Bancshares, Inc.